Senate

General Assembly

File No. 455

February Session, 2012

Substitute Senate Bill No. 417

Senate, April 16, 2012

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING JUVENILE MATTERS AND PERMANENT GUARDIANSHIPS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subdivision (1) of section 46b-120 of the 2012 supplement to the general statutes, as amended by section 82 of public act 09-7 of the September special session, sections 9 and 10 of public act 11-71, section 12 of public act 11-157 and section 3 of public act 11-240, is repealed and the following is substituted in lieu thereof (*Effective October 1, 2012*):

(1) "Child" means any person under eighteen years of age who has not been legally emancipated, except that (A) for purposes of delinquency matters and proceedings, "child" means any person **[**(i)**]** who (i) is at least seven years of age at the time of the alleged commission of a delinquent act and who is (I) under eighteen years of age **[**who**]** and has not been legally emancipated, or **[**(ii)**]** (II) eighteen years of age or older **[**who,**]** and committed a delinquent act prior to attaining eighteen years of age, **[**has committed a delinquent act or,**]** or

(ii) is subsequent to attaining eighteen years of age, (I) violates any order of the Superior Court or any condition of probation ordered by the Superior Court with respect to a delinquency proceeding, or (II) wilfully fails to appear in response to a summons under section 46b-133 or at any other court hearing in a delinquency proceeding of which the child had notice, and (B) for purposes of family with service needs matters and proceedings, child means a person who is at least seven years of age and is under eighteen years of age;

Sec. 2. Subdivision (5) of section 46b-120 of the 2012 supplement to the general statutes, as amended by section 82 of public act 09-7 of the September special session, sections 9 and 10 of public act 11-71, section 12 of public act 11-157 and section 3 of public act 11-240, is repealed and the following is substituted in lieu thereof (*Effective October 1, 2012*):

(5) "Family with service needs" means a family that includes a child who is at least seven years of age and is under eighteen years of age who (A) has without just cause run away from the parental home or other properly authorized and lawful place of abode, (B) is beyond the control of the child's or youth's parent, parents, guardian or other custodian, (C) has engaged in indecent or immoral conduct, (D) is a truant or habitual truant or who, while in school, has been continuously and overtly defiant of school rules and regulations, or (E) is thirteen years of age or older and has engaged in sexual intercourse with another person and such other person is thirteen years of age or older and not more than two years older or younger than such child or youth;

Sec. 3. (NEW) (*Effective October 1, 2012*) (a) In any juvenile matter, as defined in section 46b-121 of the general statutes, in which a child or youth is alleged to have committed a delinquent act or an act or omission for which a petition may be filed under section 46b-149 of the general statutes, the child or youth shall not be tried, convicted, adjudicated or subject to any disposition pursuant to section 46b-140, as amended by this act, or 46b-149 of the general statutes while the

child or youth is not competent. For the purposes of this section, a transfer to the regular criminal docket of the Superior Court pursuant to section 46b-127 of the general statutes, as amended by this act, shall not be considered a disposition. A child or youth is not competent if the child or youth is unable to understand the proceedings against him or her or to assist in his or her own defense.

(b) If, at any time during a proceeding on a juvenile matter, it appears that the child or youth is not competent, counsel for the child or youth, the prosecutorial official, or the court, on its own motion, may request an examination to determine the child's or youth's competency. Whenever a request for a competency examination is under consideration by the court, the child or youth shall be represented by counsel in accordance with the provisions of sections 46b-135 and 46b-136 of the general statutes.

(c) A child or youth alleged to have committed an offense is presumed to be competent. The age of the child or youth is not a per se determinant of incompetency. The burden of going forward with the evidence and proving that the child or youth is not competent by a preponderance of the evidence shall be on the party raising the issue of competency, except that if the court raises the issue of competency, the burden of going forward with the evidence shall be on the state. The court may call its own witnesses and conduct its own inquiry.

(d) If the court finds that the request for a competency examination is justified and that there is probable cause to believe that the child or youth has committed the alleged offense, the court shall order a competency examination of the child or youth. Competency examinations shall be conducted by (1) a clinical team constituted under policies and procedures established by the Chief Court Administrator, or (2) if agreed to by all parties, a physician specializing in psychiatry who has experience in conducting forensic interviews and in child and adult psychiatry. Any clinical team constituted under this section shall consist of three persons: A clinical psychologist with experience in child and adolescent psychology, and two of the

following three types of professionals: (A) A clinical social worker licensed pursuant to chapter 383b of the general statutes, (B) a child and adolescent psychiatric nurse clinical specialist holding a master's degree in nursing, or (C) a physician specializing in psychiatry. At least one member of the clinical team shall have experience in conducting forensic interviews and at least one member of the clinical team shall have experience in child and adolescent psychology. The court may authorize a physician, a clinical psychologist, a child and adolescent psychiatric nurse specialist or a clinical social worker licensed pursuant to chapter 383b of the general statutes, selected by the child or youth, to observe the examination, at the expense of the child or youth or, if the child or youth is represented by counsel appointed through the Public Defender Services Commission, the Office of the Chief Public Defender. In addition, counsel for the child or youth, his or her designated representative and, if the child or youth is represented by a public defender, a social worker from the Division of Public Defender Services, may observe the examination.

(e) The examination shall be completed not later than fifteen business days after the date it was ordered, unless the time for completion is extended by the court for good cause shown. The members of the clinical team or the examining physician shall prepare and sign, without notarization, a written report and file such report with the court not later than twenty-one business days after the date of the order. The report shall address the child's or youth's ability to understand the proceedings against such child or youth and such child's or youth's ability to assist in his or her own defense. If the opinion of the clinical team or the examining physician set forth in such report is that the child cannot understand the proceedings against such child or youth or is not able to assist in his or her own defense, the members of the team or the examining physician must determine and address in their report: (1) Whether there is a substantial probability that the child or youth will attain or regain competency within ninety days of an intervention being ordered by the court; and (2) the nature and type of intervention, in the least restrictive setting possible, recommended to attain or regain competency. On receipt of

the written report, the clerk of the court shall cause copies of such written report to be delivered to counsel for the state and counsel for the child or youth at least forty-eight hours prior to the hearing held under subsection (f) of this section.

(f) The court shall hold a hearing as to the competency of the child or youth not later than ten business days after the court receives the written report of the clinical team or the examining physician pursuant to subsection (e) of this section. A child or youth may waive such evidentiary hearing only if the clinical team or examining physician has determined without qualification that the child or youth is competent. Any evidence regarding the child's or youth's competency, including, but not limited to, the written report, may be introduced in evidence at the hearing by either the child or youth or the state. If the written report is introduced as evidence, at least one member of the clinical team or the examining physician shall be present to testify as to the determinations in the report, unless the clinical team's or the examining physician's presence is waived by the child or youth and the state. Any member of the clinical team shall be considered competent to testify as to the clinical team's determinations.

(g) (1) If the court, after the competency hearing, finds by a preponderance of the evidence that the child or youth is competent, the court shall continue with the prosecution of the juvenile matter. (2) If the court, after the competency hearing, finds that the child or youth is not competent, the court shall determine: (A) Whether there is a substantial probability that the child or youth will attain or regain competency within ninety days of an intervention being ordered by the court; and (B) whether the recommended intervention to attain or regain competency is appropriate. In making its determination on an appropriate intervention, the court may consider: (i) The nature and circumstances of the alleged offense; (ii) the length of time the clinical team or examining physician estimates it will take for the child or youth to attain or regain competency; (iii) whether the child or youth poses a substantial risk to reoffend; and (iv) whether the child or youth is able to receive community-based services or treatment that would

prevent the child or youth from reoffending.

(h) If the court finds that there is not a substantial probability that the child or youth will attain or regain competency within ninety days or that the recommended intervention to attain or regain competency is not appropriate, the court may issue an order in accordance with subsection (k) of this section.

(i) (1) If the court finds that there is a substantial probability that the child or youth will attain or regain competency within ninety days if provided an appropriate intervention, the court shall schedule a hearing on the implementation of such intervention within five business days.

(2) An intervention implemented for the purpose of restoring competency shall comply with the following conditions: (A) The period of intervention shall not exceed ninety days, unless extended for an additional ninety days in accordance with the criteria set forth in subsection (j) of this section; and (B) the intervention services shall be provided by the Department of Children and Families or, if the child's or youth's parent or guardian agrees to pay for such services, by any appropriate person, agency, mental health facility or treatment program that agrees to provide appropriate intervention services in the least restrictive setting available to the child or youth and comply with the requirements of this section.

(3) Prior to the hearing, the court shall notify the Commissioner of Children and Families, the commissioner's designee or the appropriate person, agency, mental health facility or treatment program that has agreed to provide appropriate intervention services to the child or youth that an intervention to attain or regain competency will be ordered. The commissioner, the commissioner's designee or the appropriate person, agency, mental health facility or treatment program shall be provided with a copy of the report of the clinical team or examining physician and shall report to the court on a proposed implementation of the intervention prior to the hearing.

(4) At the hearing, the court shall review the written report and order an appropriate intervention for a period not to exceed ninety days in the least restrictive setting available to restore competency. In making its determination, the court shall use the criteria set forth in subdivision (2) of subsection (g) of this section. Upon ordering an intervention, the court shall set a date for a hearing, to be held at least ten business days after the completion of the intervention period, for the purpose of reassessing the child's or youth's competency.

(j) (1) At least ten business days prior to the date of any scheduled hearing on the issue of the reassessment of the child's or youth's competency, the Commissioner of Children and Families, the commissioner's designee or other person, agency, mental health facility or treatment program providing intervention services to restore a child or youth to competency shall report on the progress of such intervention services to the clinical team or examining physician.

(2) Upon receipt of the report on the progress of such intervention, the child or youth shall be reassessed by the original clinical team or examining physician, except that if the original team or examining physician is unavailable, the court may appoint a new clinical team that, where possible, shall include at least one member of the original team, or a new examining physician. The new clinical team or examining physician shall have the same qualifications as the original team or examining physician, as provided in subsection (d) of this section, and shall have access to clinical information available from the provider of the intervention services. Not less than two business days prior to the date of any scheduled hearing on the reassessment of the child's or youth's competency, the clinical team or examining physician shall submit a report to the court that includes: (A) The clinical findings of the provider of the intervention services and the facts upon which the findings are made; (B) the clinical team's or the examining physician's opinion on whether the child or youth has attained or regained competency or is making progress toward attaining or regaining competency within the period covered by the intervention order; and (C) any other information concerning the child or youth

requested by the court, including, but not limited to, the method of intervention or the type, dosage and effect of any medication the child or youth is receiving.

(3) Within two business days of the filing of a reassessment report, the court shall hold a hearing to determine if the child or youth has attained or regained competency within the period covered by the intervention order. If the court finds that the child or youth has attained or regained competency, the court shall continue with the prosecution of the juvenile matter. If the court finds that the child or youth has not attained or regained competency within the period covered by the intervention order, the court shall determine whether further efforts to attain or regain competency are appropriate. The court shall make its determination of whether further efforts to attain or regain competency are appropriate in accordance with the criteria set forth in subdivision (2) of subsection (g) of this section. If the court finds that further intervention to attain or regain competency is appropriate, the court shall order a new period for restoration of competency not to exceed ninety days. If the court finds that further intervention to attain or regain competency is not appropriate or the child or youth has not attained or regained competency after an additional intervention of ninety days, the court shall issue an order in accordance with subsection (k) of this section.

(k) (1) If the court determines after the period covered by the intervention order that the child or youth has not attained or regained competency and that there is not a substantial probability that the child or youth will attain or regain competency, or that further intervention to attain or regain competency is not appropriate based on the criteria set forth in subdivision (2) of subsection (g) of this section, the court shall: (A) Dismiss the petition if it is a delinquency or family with service needs petition; (B) vest temporary custody of the child or youth in the Commissioner of Children and Families and notify the Office of the Chief Public Defender, which shall assign an attorney to serve as guardian ad litem for the child or youth and investigate whether a petition should be filed under section 46b-129 of

the general statutes, as amended by this act; or (C) order that the Department of Children and Families or some other person, agency, mental health facility or treatment program, or such child's or youth's probation officer, conduct or obtain an appropriate assessment and, where appropriate, propose a plan for services that can appropriately address the child's or youth's needs in the least restrictive setting available and appropriate. Any plan for services may include a plan for interagency collaboration for the provision of appropriate services after the child or youth attains the age of eighteen.

(2) Not later than ten business days after the issuance of an order pursuant to subparagraph (B) or (C) of subdivision (1) of this subsection, the court shall hold a hearing to review the order of temporary custody or any recommendations of the Department of Children and Families, such probation officer or such attorney or guardian ad litem for the child or youth.

(3) If the child or youth is adjudicated neglected, uncared-for or abused subsequent to such a petition being filed, or if a plan for services pursuant to subparagraph (C) of subdivision (1) of this subsection has been approved by the court and implemented, the court may dismiss the delinquency or family with service needs petition, or, in the discretion of the court, order that the prosecution of the case be suspended for a period not to exceed eighteen months. During the period of suspension, the court may order the Department of Children and Families to provide periodic reports to the court to ensure that appropriate services are being provided to the child or youth. If during the period of suspension, the child or youth or the parent or guardian of the child or youth does not comply with the requirements set forth in the plan for services, the court may hold a hearing to determine whether the court should follow the procedure under subparagraph (B) of subdivision (1) of this subsection for instituting a petition alleging that a child is neglected, uncared for or abused. Whenever the court finds that the need for the suspension of prosecution is no longer necessary, but not later than the expiration of such period of suspension, the delinquency or family with service needs petition shall

be dismissed.

Sec. 4. Subsection (c) of section 46b-129 of the 2012 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2012*):

(c) The preliminary hearing on the order of temporary custody or order to appear or the first hearing on a petition filed pursuant to subsection (a) of this section shall be held in order for the court to:

(1) Advise the parent or guardian of the allegations contained in all petitions and applications that are the subject of the hearing and the parent's or guardian's right to counsel pursuant to subsection (b) of section 46b-135;

(2) **[**assure**]** Ensure that an attorney, and where appropriate, a separate guardian ad litem has been appointed to represent the child or youth in accordance with subsection (b) of section 51-296a and sections 46b-129a, as amended by this act, and 46b-136;

(3) **[**upon**]** Upon request, appoint an attorney to represent the respondent when the respondent is unable to afford representation, in accordance with subsection (b) of section 51-296a;

(4) **[**advise**]** Advise the parent or guardian of the right to a hearing on the petitions and applications, to be held not later than ten days after the date of the preliminary hearing if the hearing is pursuant to an order of temporary custody or an order to show cause;

(5) **[**accept**]** Accept a plea regarding the truth of **[**such**]** the allegations;

(6) **[**make**]** Make any interim orders, including visitation orders, that the court determines are in the best interests of the child or youth. The court, after a hearing pursuant to this subsection, shall order specific steps the commissioner and the parent or guardian shall take for the parent or guardian to regain or to retain custody of the child or youth;

(7) [take] Take steps to determine the identity of the father of the child or youth, including, if necessary, inquiring of the mother of the child or youth, under oath, as to the identity and address of any person who might be the father of the child or youth and ordering genetic testing, and order service of the petition and notice of the hearing date, if any, to be made upon him;

(8) [if] If the person named as the father appears [,] and admits that he is the father, provide him and the mother with the notices that comply with section 17b-27 and provide them with the opportunity to sign a paternity acknowledgment and affirmation on forms that comply with section 17b-27. Such documents shall be executed and filed in accordance with chapter 815y and a copy delivered to the clerk of the superior court for juvenile matters. The clerk of the superior court for juvenile matters shall send a certified copy of the paternity acknowledgment and affirmation to the Department of Public Health for filing in the paternity registry maintained under section 19a-42a, and shall maintain a certified copy of the paternity acknowledgment and affirmation in the court file;

(9) [in the event that] If the person named as a father appears and denies that he is the father of the child or youth, [advise him that he may have no further standing in any proceeding concerning the child, and either] order genetic testing to determine paternity in accordance with section 46b-168. [or direct him to execute a written denial of paternity on a form promulgated by the Office of the Chief Court Administrator. Upon execution of such a form by the putative father,] If the results of the genetic tests indicate a ninety-nine per cent or greater probability that the person named as father is the father of the child or youth, such results shall constitute a rebuttable presumption that the person named as father is the father of the child or youth, provided the court finds evidence that sexual intercourse occurred between the mother and the person named as father during the period of time in which the child was conceived. If the court finds such rebuttable presumption, the court may issue judgment adjudicating paternity after providing the father an opportunity for a hearing. The

clerk of the court shall send a certified copy of any judgment adjudicating paternity to the Department of Public Health for filing in the paternity registry maintained under section 19a-42a. If the results of the genetic tests indicate that the person named as father is not the biological father of the child or youth, the court shall enter a judgment that he is not the father and the court **[**may**]** shall remove him from the case and afford him no further standing in the case or in any subsequent proceeding regarding the child or youth; **[**until such time as paternity is established by formal acknowledgment or adjudication in a court of competent jurisdiction;**]**

(10) **[**identify**]** Identify any person or persons related to the child or youth by blood or marriage residing in this state who might serve as licensed foster parents or temporary custodians and order the Commissioner of Children and Families to investigate and report to the court, not later than thirty days after the preliminary hearing, the appropriateness of **[**placement of**]** placing the child or youth with such relative or relatives; and

(11) **[**in**]** In accordance with the provisions of the Interstate Compact on the Placement of Children pursuant to section 17a-175, identify any person or persons related to the child or youth by blood or marriage residing out of state who might serve as licensed foster parents or temporary custodians, and order the Commissioner of Children and Families to investigate and determine, within a reasonable time, the appropriateness of **[**placement of**]** placing the child or youth with such relative or relatives.

Sec. 5. Subparagraph (C) of subdivision (2) of section 46b-129a of the 2012 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(C) The primary role of any counsel for the child shall be to advocate for the child in accordance with the Rules of Professional Conduct, except that if the child is incapable of expressing the child's wishes to the child's counsel because of age or other incapacity, the counsel for the child shall advocate for the best interests of the child.

Sec. 6. Subsection (b) of section 46b-140 of the 2012 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(b) Upon conviction of a child as delinquent, the court: (1) May (A) **[**place the child in the care of any institution or agency which is permitted by law to care for children; (B)**]** order the child to participate in an alternative incarceration program; **[**(C)**]** (B) order the child to participate in a program at a wilderness school **[**program**]** facility operated by the Department of Children and Families; **[**(D)**]** (C) order the child to participate in a youth service bureau program; **[**(E)**]** (D) place the child on probation; **[**(F)**]** (E) order the child or the parents or guardian of the child, or both, to make restitution to the victim of the offense in accordance with subsection (d) of this section; **[**(G)**]** (F) order the child to participate in a program of community service in accordance with subsection (e) of this section; or **[**(H)**]** (G) withhold or suspend execution of any judgment; and (2) shall impose the penalty established in subsection (b) of section 30-89 **[**,**]** for any violation of said subsection (b).

Sec. 7. Subdivision (4) of subsection (d) of section 46b-129 of the 2012 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2012*):

(4) Any person related to a child or youth may file a motion to intervene for purposes of seeking **[**permanent**]** guardianship of a child or youth more than ninety days after the date of the preliminary hearing. The granting of such motion to intervene shall be solely in the court's discretion, except that such motion shall be granted absent good cause shown whenever the child's or youth's most recent placement has been disrupted or is about to be disrupted. The court may, in the court's discretion, order the Commissioner of Children and Families to conduct an assessment of such relative granted intervenor status pursuant to this subdivision.

Sec. 8. Subsections (j) to (r), inclusive, of section 46b-129 of the 2012 supplement to the general statutes are repealed and the following is

substituted in lieu thereof (*Effective October 1, 2012*):

(j) (1) For the purposes of this subsection and subsection (k) of this section, "permanent legal guardianship" means a permanent guardianship, as defined in section 45a-604, as amended by this act.

[(j)**]** (2) Upon finding and adjudging that any child or youth is uncared-for, neglected or abused the court may (A) commit such child or youth to the Commissioner of Children and Families**,** **[**. Such**]** and such commitment shall remain in effect until further order of the court, except that such commitment may be revoked or parental rights terminated at any time by the court**;** **[**, or the court may**]** (B) vest such child's or youth's legal guardianship in any private or public agency that is permitted by law to care for neglected, uncared-for or abused children or youths or with any other person or persons found to be suitable and worthy of such responsibility by the court, including, but not limited to, any relative of such child or youth by blood or marriage; (C) vest such child's or youth's permanent legal guardianship in any person or persons found to be suitable and worthy of such responsibility by the court, including, but not limited to, any relative of such child or youth by blood or marriage in accordance with the requirements set forth in subdivision (5) of this subsection; or (D) place the child or youth in the custody of the parent or guardian with protective supervision by the Commissioner of Children and Families subject to conditions established by the court.

(3) If the court determines that the commitment should be revoked and the child's or youth's legal guardianship or permanent legal guardianship should vest in someone other than the respondent parent, parents or former guardian, or if parental rights are terminated at any time, there shall be a rebuttable presumption that an award of legal guardianship or permanent legal guardianship upon revocation to, or adoption upon termination of parental rights by, any relative who is licensed as a foster parent for such child or youth, or who is, pursuant to an order of the court, the temporary custodian of the child or youth at the time of the revocation or termination, shall be in the

best interests of the child or youth and that such relative is a suitable and worthy person to assume legal guardianship or permanent legal guardianship upon revocation or to adopt such child or youth upon termination of parental rights. The presumption may be rebutted by a preponderance of the evidence that an award of legal guardianship or permanent legal guardianship to, or an adoption by, such relative would not be in the child's or youth's best interests and such relative is not a suitable and worthy person. The court shall order specific steps that the parent must take to facilitate the return of the child or youth to the custody of such parent.

(4) The commissioner shall be the guardian of such child or youth for the duration of the commitment, provided the child or youth has not reached the age of eighteen years or, in the case of a child or youth in full-time attendance in a secondary school, a technical school, a college or a state-accredited job training program, provided such child or youth has not reached the age of twenty-one years, by consent of such child or youth, or until another guardian has been legally appointed, and in like manner, upon such vesting of the care of such child or youth, such other public or private agency or individual shall be the guardian of such child or youth until such child or youth has reached the age of eighteen years or, in the case of a child or youth in full-time attendance in a secondary school, a technical school, a college or a state-accredited job training program, until such child or youth has reached the age of twenty-one years or until another guardian has been legally appointed. The commissioner may place any child or youth so committed to the commissioner in a suitable foster home or in the home of a person related by blood or marriage to such child or youth or in a licensed child-caring institution or in the care and custody of any accredited, licensed or approved child-caring agency, within or without the state, provided a child shall not be placed outside the state except for good cause and unless the parents or guardian of such child are notified in advance of such placement and given an opportunity to be heard, or in a receiving home maintained and operated by the Commissioner of Children and Families. In placing such child or youth, the commissioner shall, if possible, select a

home, agency, institution or person of like religious faith to that of a parent of such child or youth, if such faith is known or may be ascertained by reasonable inquiry, provided such home conforms to the standards of said commissioner and the commissioner shall, when placing siblings, if possible, place such children together. **[**As an alternative to commitment, the court may place the child or youth in the custody of the parent or guardian with protective supervision by the Commissioner of Children and Families subject to conditions established by the court.**]** Upon the issuance of an order committing the child or youth to the Commissioner of Children and Families, or not later than sixty days after the issuance of such order, the court shall determine whether the Department of Children and Families made reasonable efforts to keep the child or youth with his or her parents or guardian prior to the issuance of such order and, if such efforts were not made, whether such reasonable efforts were not possible, taking into consideration the child's or youth's best interests, including the child's or youth's health and safety.

(5) Prior to issuing an order for permanent legal guardianship, the court shall provide notice to each parent that the parent may not file a motion to terminate the permanent legal guardianship, or the court shall indicate on the record why such notice could not be provided, and the court shall find by clear and convincing evidence that the permanent legal guardianship is in the best interests of the child or youth and that the following have been proven by clear and convincing evidence:

(A) One of the statutory grounds for termination of parental rights exists, as set forth in subsection (j) of section 17a-112, or the parents have voluntarily consented to the establishment of the permanent legal guardianship;

(B) Adoption of the child or youth is not possible or appropriate;

(C) (i) If the child or youth is as least twelve years of age, such child or youth consents to the proposed permanent legal guardianship, or (ii) if the child is under twelve years of age, the proposed permanent

legal guardian is: (I) A relative, or (II) already serving as the permanent legal guardian of at least one of the child's siblings, if any;

(D) The child or youth has resided with the proposed permanent legal guardian for at least a year; and

(E) The proposed permanent legal guardian is (i) a suitable and worthy person, and (ii) committed to remaining the permanent legal guardian and assuming the right and responsibilities for the child or youth until the child or youth attains the age of majority.

(6) An order of permanent legal guardianship may be reopened and modified and the permanent legal guardian removed upon the filing of a motion with the court, provided it is proven by a fair preponderance of the evidence that the permanent legal guardian is no longer suitable and worthy. A parent may not file a motion to terminate a permanent legal guardianship. If, after a hearing, the court terminates a permanent legal guardianship, the court, in appointing a successor legal guardian or permanent legal guardian for the child or youth shall do so in accordance with this subsection.

(k) (1) Nine months after placement of the child or youth in the care and custody of the commissioner pursuant to a voluntary placement agreement, or removal of a child or youth pursuant to section 17a-101g or an order issued by a court of competent jurisdiction, whichever is earlier, the commissioner shall file a motion for review of a permanency plan. Nine months after a permanency plan has been approved by the court pursuant to this subsection, the commissioner shall file a motion for review of the permanency plan. Any party seeking to oppose the commissioner's permanency plan, including a relative of a child or youth by blood or marriage who has intervened pursuant to subsection (d) of this section and is licensed as a foster parent for such child or youth or is vested with such child's or youth's temporary custody by order of the court, shall file a motion in opposition not later than thirty days after the filing of the commissioner's motion for review of the permanency plan, which motion shall include the reason therefor. A permanency hearing on

any motion for review of the permanency plan shall be held not later than ninety days after the filing of such motion. The court shall hold evidentiary hearings in connection with any contested motion for review of the permanency plan and credible hearsay evidence regarding any party's compliance with specific steps ordered by the court shall be admissible at such evidentiary hearings. The commissioner shall have the burden of proving that the proposed permanency plan is in the best interests of the child or youth. After the initial permanency hearing, subsequent permanency hearings shall be held not less frequently than every twelve months while the child or youth remains in the custody of the Commissioner of Children and Families. The court shall provide notice to the child or youth, the parent or guardian of such child or youth, and any intervenor of the time and place of the court hearing on any such motion not less than fourteen days prior to such hearing.

(2) At a permanency hearing held in accordance with the provisions of subdivision (1) of this subsection, the court shall approve a permanency plan that is in the best interests of the child or youth and takes into consideration the child's or youth's need for permanency. The child's or youth's health and safety shall be of paramount concern in formulating such plan. Such permanency plan may include the goal of (A) revocation of commitment and reunification of the child or youth with the parent or guardian, with or without protective supervision; (B) transfer of guardianship or permanent legal guardianship; (C) long-term foster care with a relative licensed as a foster parent; (D) filing of termination of parental rights and adoption; or (E) another planned permanent living arrangement ordered by the court, provided the Commissioner of Children and Families has documented a compelling reason why it would not be in the best **[**interest**]** interests of the child or youth for the permanency plan to include the goals in subparagraphs (A) to (D), inclusive, of this subdivision. Such other planned permanent living arrangement may include, but not be limited to, placement of a child or youth in an independent living program or long term foster care with an identified foster parent.

(3) At a permanency hearing held in accordance with the provisions of subdivision (1) of this subsection, the court shall review the status of the child, the progress being made to implement the permanency plan, determine a timetable for attaining the permanency plan, determine the services to be provided to the parent if the court approves a permanency plan of reunification and the timetable for such services, and determine whether the commissioner has made reasonable efforts to achieve the permanency plan. The court may revoke commitment if a cause for commitment no longer exists and it is in the best interests of the child or youth.

(4) If the court approves the permanency plan of adoption: (A) The Commissioner of Children and Families shall file a petition for termination of parental rights not later than sixty days after such approval if such petition has not previously been filed; (B) the commissioner may conduct a thorough adoption assessment and child-specific recruitment; and (C) the court may order that the child be photo-listed within thirty days if the court determines that such photo-listing is in the best **[**interest**]** interests of the child. As used in this subdivision, "thorough adoption assessment" means conducting and documenting face-to-face interviews with the child, foster care providers and other significant parties and "child specific recruitment" means recruiting an adoptive placement targeted to meet the individual needs of the specific child, including, but not limited to, use of the media, use of photo-listing services and any other in-state or out-of-state resources that may be used to meet the specific needs of the child, unless there are extenuating circumstances that indicate that such efforts are not in the best **[**interest**]** interests of the child.

(l) The Commissioner of Children and Families shall pay directly to the person or persons furnishing goods or services determined by said commissioner to be necessary for the care and maintenance of such child or youth the reasonable expense thereof, payment to be made at intervals determined by said commissioner; and the Comptroller shall draw his or her order on the Treasurer, from time to time, for such part of the appropriation for care of committed children or youths as may

be needed in order to enable the commissioner to make such payments. The commissioner shall include in the department's annual budget a sum estimated to be sufficient to carry out the provisions of this section. Notwithstanding that any such child or youth has income or estate, the commissioner may pay the cost of care and maintenance of such child or youth. The commissioner may bill to and collect from the person in charge of the estate of any child or youth aided under this chapter, or the payee of such child's or youth's income, the total amount expended for care of such child or youth or such portion thereof as any such estate or payee is able to reimburse, provided the commissioner shall not collect from such estate or payee any reimbursement for the cost of care or other expenditures made on behalf of such child or youth from (1) the proceeds of any cause of action received by such child or youth; (2) any lottery proceeds due to such child or youth; (3) any inheritance due to such child or youth; (4) any payment due to such child or youth from a trust other than a trust created pursuant to 42 USC 1396p, as amended from time to time; or (5) the decedent estate of such child or youth.

(m) The commissioner, a parent or the child's attorney may file a motion to revoke a commitment, and, upon finding that cause for commitment no longer exists, and that such revocation is in the best interests of such child or youth, the court may revoke the commitment of such child or youth. No such motion shall be filed more often than once every six months.

(n) If the court has ordered legal guardianship of a child or youth to be vested in a suitable and worthy person pursuant to subsection (j) of this section, the child's or youth's parent or former legal guardian may file a petition to reinstate guardianship of the child or youth in such parent or former legal guardian. Upon the filing of such a petition, the court may order the Commissioner of Children and Families to investigate the home conditions and needs of the child or youth and the home conditions of the person seeking reinstatement of guardianship, and to make a recommendation to the court. A party to a petition for reinstatement of guardianship shall not be entitled to

court-appointed counsel or representation by Division of Public Defender Services assigned counsel, except as provided in section 46b-136. Upon finding that the cause for the removal of guardianship no longer exists, and that reinstatement is in the best interests of the child or youth, the court may reinstate the guardianship of the parent or the former legal guardian. No such petition may be filed more often than once every six months.

[(n)**]** (o) Upon service on the parent, guardian or other person having control of the child or youth of any order issued by the court pursuant to the provisions of subsections (b) and (j) of this section, the child or youth concerned shall be surrendered to the person serving the order who shall forthwith deliver the child or youth to the person, agency, department or institution awarded custody in the order. Upon refusal of the parent, guardian or other person having control of the child or youth to surrender the child or youth as provided in the order, the court may cause a warrant to be issued charging the parent, guardian or other person having control of the child or youth with contempt of court. If the person arrested is found in contempt of court, the court may order such person confined until the person complies with the order, but for not more than six months, or may fine such person not more than five hundred dollars, or both.

[(o)**]** (p) A foster parent, prospective adoptive parent or relative caregiver shall receive notice and have the right to be heard for the purposes of this section in Superior Court in any proceeding concerning a foster child living with such foster parent, prospective adoptive parent or relative caregiver. A foster parent, prospective adoptive parent or relative caregiver who has cared for a child or youth shall have the right to be heard and comment on the best interests of such child or youth in any proceeding under this section which is brought not more than one year after the last day the foster parent, prospective adoptive parent or relative caregiver provided such care.

[(p)**]** (q) Upon motion of any sibling of any child committed to the

Department of Children and Families pursuant to this section, such sibling shall have the right to be heard concerning visitation with, and placement of, any such child. In awarding any visitation or modifying any placement, the court shall be guided by the best interests of all siblings affected by such determination.

[(q)**]** (r) The provisions of section 17a-152, regarding placement of a child from another state, and section 17a-175, regarding the Interstate Compact on the Placement of Children, shall apply to placements pursuant to this section. In any proceeding under this section involving the placement of a child or youth in another state where the provisions of section 17a-175 are applicable, the court shall, before ordering or approving such placement, state for the record the court's finding concerning compliance with the provisions of section 17a-175. The court's statement shall include, but not be limited to: (1) A finding that the state has received notice in writing from the receiving state, in accordance with subsection (d) of Article III of section 17a-175, indicating that the proposed placement does not appear contrary to the interests of the child, (2) the court has reviewed such notice, (3) whether or not an interstate compact study or other home study has been completed by the receiving state, and (4) if such a study has been completed, whether the conclusions reached by the receiving state as a result of such study support the placement.

[(r)**]** (s) In any proceeding under this section, the Department of Children and Families shall provide notice to **[**every**]** each attorney of record for each party involved in the proceeding when the department seeks to transfer a child or youth in its care, custody or control to an out-of-state placement.

Sec. 9. Section 45a-604 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2012*):

As used in sections 45a-603 to 45a-622, inclusive, and section 10 of this act:

(1) "Mother" means a woman who can show proof by means of a

birth certificate or other sufficient evidence of having given birth to a child and an adoptive mother as shown by a decree of a court of competent jurisdiction or otherwise;

(2) "Father" means a man who is a father under the law of this state including a man who, in accordance with section 46b-172, executes a binding acknowledgment of paternity and a man determined to be a father under chapter 815y;

(3) "Parent" means a mother as defined in subdivision (1) of this section or a "father" as defined in subdivision (2) of this section;

(4) "Minor" or "minor child" means a person under the age of eighteen;

(5) "Guardianship" means guardianship of the person of a minor, and includes: (A) The obligation of care and control; (B) the authority to make major decisions affecting the minor's education and welfare, including, but not limited to, consent determinations regarding marriage, enlistment in the armed forces and major medical, psychiatric or surgical treatment; and (C) upon the death of the minor, the authority to make decisions concerning funeral arrangements and the disposition of the body of the minor;

(6) "Guardian" means **[**one**]** a person who has the authority and obligations of "guardianship", as defined in subdivision (5) of this section;

(7) "Termination of parental rights" means the complete severance by court order of the legal relationship, with all its rights and responsibilities, between the child and the child's parent or parents so that the child is free for adoption, except that it shall not affect the right of inheritance of the child or the religious affiliation of the child;

(8) "Permanent guardianship" means a guardianship, as defined in subdivision (5) of this section, that is intended to endure until the minor reaches the age of majority without termination of the parental rights of the minor's parents; and

(9) "Permanent guardian" means a person who has the authority and obligations of a permanent guardianship, as defined in subdivision (8) of this section.

Sec. 10. (NEW) (*Effective October 1, 2012*) (a) In appointing a guardian of the person of a minor pursuant to section 45a-616 of the general statutes, or at any time following such appointment, the court of probate may establish a permanent guardianship if the court provides notice to each parent that the parent may not petition for reinstatement as guardian or petition to terminate the permanent guardianship, except as provided in subsection (b) of this section, or the court indicates on the record why such notice could not be provided, and the court finds by clear and convincing evidence that the establishment of a permanent guardianship is in the best interests of the minor and that the following have been proven by clear and convincing evidence:

(1) One of the grounds for termination of parental rights, as set forth in subparagraphs (A) to (G), inclusive, of subdivision (2) of subsection (g) of section 45a-717 of the general statutes exists, or the parents have voluntarily consented to the appointment of a permanent guardian;

(2) Adoption of the minor is not possible or appropriate;

(3) (A) If the minor is at least twelve years of age, such minor consents to the proposed appointment of a permanent guardian, or (B) if the minor is under twelve years of age, the proposed permanent guardian is a relative or already serving as the permanent guardian of at least one of the minor's siblings;

(4) The minor has resided with the proposed permanent guardian for at least one year; and

(5) The proposed permanent guardian is suitable and worthy and committed to remaining the permanent guardian and assuming the rights and responsibilities for the minor until the minor reaches the age of majority.

(b) If a permanent guardian appointed under this section becomes unable or unwilling to serve as permanent guardian, the court may appoint a successor guardian or permanent guardian in accordance with this section and sections 45a-616 and 45a-617 of the general statutes, as amended by this act, or may reinstate a parent of the minor who was previously removed as guardian of the person of the minor if the court finds that the factors that resulted in the removal of the parent as guardian have been resolved satisfactorily, and that it is in the best interests of the child to reinstate the parent as guardian.

Sec. 11. Section 45a-611 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2012*):

(a) **[**Any**]** Except as provided in subsection (d) of this section, any parent who has been removed as the guardian of the person of a minor may apply to the court of probate which removed him or her for reinstatement as the guardian of the person of the minor, if in his or her opinion the factors which resulted in removal have been resolved satisfactorily.

(b) In the case of a parent who seeks reinstatement, the court shall hold a hearing following notice to the guardian, to the parent or parents and to the minor, if over twelve years of age, as provided in section 45a-609. If the court determines that the factors which resulted in the removal of the parent have been resolved satisfactorily, the court may remove the guardian and reinstate the parent as guardian of the person of the minor, if it determines that it is in the best interests of the minor to do so. At the request of a parent, guardian, counsel or guardian ad litem representing one of the parties, filed within thirty days of the decree, the court shall make findings of fact to support its conclusions.

(c) The provisions of this section shall also apply to the reinstatement of any guardian of the person of a minor other than a parent.

(d) Notwithstanding the provisions of this section, and subject to the

provisions of subsection (b) of section 10 of this act, a parent who has been removed as guardian of the person of a minor may not petition for reinstatement as guardian if a court has established a permanent guardianship for the person of the minor pursuant to section 10 of this act.

Sec. 12. Section 45a-613 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2012*):

(a) Any guardian, **[**or**]** coguardians or permanent guardian of the person of a minor appointed under section 45a-616 or section 10 of this act, or appointed by a court of comparable jurisdiction in another state, may be removed by the court of probate which made the appointment, and another guardian, **[**or**]** coguardian or permanent guardian appointed, in the same manner as that provided in sections 45a-603 to 45a-622, inclusive, for removal of a parent as guardian.

(b) Any removal of a guardian, coguardian or permanent guardian under subsection (a) of this section shall be preceded by notice to the guardian, **[**or**]** coguardians or permanent guardian, the parent or parents and the minor if over twelve years of age, as provided by section 45a-609.

(c) If a new guardian, coguardian or permanent guardian is appointed, the court shall send a copy of that order to the parent or parents of the minor.

Sec. 13. Section 45a-614 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2012*):

(a) **[**The**]** Except as provided in subsection (b) of this section, the following persons may apply to the court of probate for the district in which the minor resides for the removal as guardian of one or both parents of the minor: (1) Any adult relative of the minor, including those by blood or marriage; (2) the court on its own motion; or (3) counsel for the minor.

(b) A parent may not petition for the removal of a permanent

guardian appointed pursuant to section 10 of this act.

Sec. 14. Section 45a-617 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2012*):

When appointing a guardian, **[**or**]** coguardians or permanent guardian of the person of a minor, the court shall take into consideration the following factors: (1) The ability of the prospective guardian, **[**or**]** coguardians or permanent guardian to meet, on a continuing day to day basis, the physical, emotional, moral and educational needs of the minor; (2) the minor's wishes, if he or she is over the age of twelve or is of sufficient maturity and capable of forming an intelligent preference; (3) the existence or nonexistence of an established relationship between the minor and the prospective guardian, **[**or**]** coguardians or permanent guardian; and (4) the best interests of the child. There shall be a rebuttable presumption that appointment of a grandparent or other relative related by blood or marriage as a guardian, coguardian or permanent guardian is in the best interests of the minor child.

Sec. 15. Subsections (a) and (b) of section 46b-127 of the 2012 supplement to the general statutes are repealed and the following is substituted in lieu thereof (*Effective October 1, 2012*):

(a) (1) The court shall automatically transfer from the docket for juvenile matters to the regular criminal docket of the Superior Court the case of any child charged with the commission of a capital felony, a class A or B felony or a violation of section 53a-54d, provided such offense was committed after such child attained the age of fourteen years and counsel has been appointed for such child if such child is indigent. Such counsel may appear with the child but shall not be permitted to make any argument or file any motion in opposition to the transfer. The child shall be arraigned in the regular criminal docket of the Superior Court at the next court date following such transfer, provided any proceedings held prior to the finalization of such transfer shall be private and shall be conducted in such parts of the courthouse or the building **[**wherein**]** in which the court is located **[**as shall be**]** that

are separate and apart from the other parts of the court which are then being [held] used for proceedings pertaining to adults charged with crimes. [The file of any case so transferred shall remain sealed until the end of the tenth working day following such arraignment unless the state's attorney has filed a motion pursuant to this subsection, in which case such file shall remain sealed until the court makes a decision on the motion.]

(2) A state's attorney may, [not later than ten working days] at any time after such arraignment, file a motion to transfer the case of any child charged with the commission of a class B felony or a violation of subdivision (2) of subsection (a) of section 53a-70 to the docket for juvenile matters for proceedings in accordance with the provisions of this chapter. [The court sitting for the regular criminal docket shall, after hearing and not later than ten working days after the filing of such motion, decide such motion.]

(b) (1) Upon motion of a prosecutorial official, [and order of the court,] the superior court for juvenile matters shall conduct a hearing to determine whether the case of any child charged with the commission of a class C or D felony or an unclassified felony shall be transferred from the docket for juvenile matters to the regular criminal docket of the Superior Court. [, provided] The court shall not order that the case be transferred under this subdivision unless the court finds that (A) such offense was committed after such child attained the age of fourteen years, [and the court finds ex parte that] (B) there is probable cause to believe the child has committed the act for which [he] the child is charged, and (C) the best interests of the child and the public will not be served by maintaining the case in the superior court for juvenile matters. In making such findings, the court shall consider (i) any prior criminal or juvenile offenses committed by the child, (ii) the seriousness of such offenses, (iii) any evidence that the child has intellectual disability or mental illness, and (iv) the availability of services in the docket for juvenile matters that can serve the child's needs. Any motion under this subdivision shall be made, and any hearing under this subdivision shall be held, not later than thirty days

after the child is arraigned in the superior court for juvenile matters. The file of any case [so] transferred pursuant to this subdivision shall remain sealed until such time as the court sitting for the regular criminal docket accepts such transfer.

(2) [The] If a case is transferred to the regular criminal docket pursuant to subdivision (1) of this subsection, the court sitting for the regular criminal docket may return [any such] the case to the docket for juvenile matters [not later than ten working days after the date of the transfer] at any time for good cause shown for proceedings in accordance with the provisions of this chapter. The child shall be arraigned in the regular criminal docket of the Superior Court by the next court date following such transfer, provided any proceedings held prior to the finalization of such transfer shall be private and shall be conducted in such parts of the courthouse or the building [wherein] in which the court is located [as shall be] that are separate and apart from the other parts of the court which are then being [held] used for proceedings pertaining to adults charged with crimes.

Sec. 16. Subsection (d) of section 46b-122 of the 2012 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2012*):

(d) Nothing in this section shall be construed to affect the confidentiality of records of cases of juvenile matters as set forth in section 46b-124 or the right of foster parents to be heard pursuant to subsection [(o)] (p) of section 46b-129, as amended by this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*October 1, 2012*	46b-120(1)
Sec. 2	*October 1, 2012*	46b-120(5)
Sec. 3	*October 1, 2012*	New section
Sec. 4	*October 1, 2012*	46b-129(c)
Sec. 5	*from passage*	46b-129a(2)(C)
Sec. 6	*from passage*	46b-140(b)
Sec. 7	*October 1, 2012*	46b-129(d)(4)

Sec. 8	*October 1, 2012*	46b-129(j) to (r)
Sec. 9	*October 1, 2012*	45a-604
Sec. 10	*October 1, 2012*	New section
Sec. 11	*October 1, 2012*	45a-611
Sec. 12	*October 1, 2012*	45a-613
Sec. 13	*October 1, 2012*	45a-614
Sec. 14	*October 1, 2012*	45a-617
Sec. 15	*October 1, 2012*	46b-127(a) and (b)
Sec. 16	*October 1, 2012*	46b-122(d)

JUD *Joint Favorable Subst.*

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 13 $	FY 14 $
Judicial Dept.	GF - Cost	72,750	97,000

Note: GF=General Fund

Municipal Impact: None

Explanation

The Judicial Department will incur costs at an annual expense of approximately $72,750 in FY 13[1] and $97,000 in FY 14 to provide competency evaluations for an estimated 35 children and youth a year. This function is currently performed by staff at the Department of Mental Health and Addiction Services (DMHAS). Transferring responsibility to the Judicial Department will reduce DMHAS employees' workload, but will not lead to direct operational savings as the 35 evaluations represent only about 6% of DMHAS' total annual evaluations.

There is no fiscal impact to the Department of Children and Families (DCF) associated with establishing seven years-of-age as the minimum age for persons to be charged with delinquency or a Family With Service Needs offense. Likewise, there is no fiscal impact to DCF associated with the creation of a "permanent legal guardianship" in Superior Court as an alternative living arrangement for child abuse and neglect victims.

The Out Years

The annualized ongoing fiscal impact identified above would

[1] The FY 13 estimate reflects an 10/1/12 effective date.

continue into the future subject to the annual number of juvenile competency evaluations provided by the Judicial Department.

OLR Bill Analysis

sSB 417

AN ACT CONCERNING JUVENILE MATTERS AND PERMANENT GUARDIANSHIPS.

SUMMARY:

This bill:

1. specifies that juvenile courts and Family with Service Needs (FWSN) services and programs are not available to children who were under age seven when they allegedly committed an otherwise-qualifying act;

2. creates a procedure, similar to that used in adult court, when there is a question about the competency of a child charged with a delinquent or status FWSN offense (see BACKGROUND);

3. expedites paternity determinations in abuse and neglect cases;

4. clarifies the role of a child's attorney when the child is incapable of expressing his or her wishes;

5. eliminates the court's authority to order, as the disposition of a case involving a child it has convicted of committing a delinquent act, that the child be placed in a child-caring institution;

6. modifies Department of Children and Families (DCF) laws to conform with its creation of the status of "permanent legal guardian" and makes similar changes in probate court laws;

7. eliminates appointment as permanent guardian as an option for relatives in certain abuse and neglect cases;

8. permits courts to admit credible hearsay evidence on a party's

compliance with court orders at contested hearings concerning permanent living arrangements for a child in DCF custody;

9. prohibits parents filing probate court petitions seeking removal of a permanent legal guardian; and

10. modifies court procedures for transferring cases involving children charged with serious felonies between the delinquency and adult court dockets.

The bill also makes minor, technical, and conforming changes.

EFFECTIVE DATE: October 1, 2012, except the provisions regarding the professional responsibilities of a child's attorney and the court's authority to order institutionalization of children adjudicated as delinquent, which are effective upon passage.

§ 3 — JUVENILE COMPETENCY

Under existing law unchanged by the bill, children and youth (hereafter "children" or "child") are presumed to be competent. But if it appears at any time during a juvenile court delinquency, FWSN, or other proceeding on a juvenile matter that the child may not be competent, the law and bill prohibit his or her being tried, convicted, adjudicated, or subject to any court disposition. The bill states that transfers from juvenile to adult court dockets are not dispositions and are therefore permissible, even if the child is not competent.

Court Hearing to Determine if Mental Examination is Warranted

Under the bill, the child's attorney or the prosecutor may request a hearing to determine if a competency examination is warranted. The judge can also raise this question on his or her own motion. The bill requires that the child be represented by an attorney whenever the court is considering a request for such an examination. (Existing law entitles children to legal representation throughout delinquency and FWSN proceedings.).

Under the bill, the party raising the question of competency bears

the burden going forward with the evidence and proving, by a preponderance of the evidence, that the child is not competent. The prosecutor bears the burden of going forward with the evidence when the judge raises the issue. The judge may call his or her own witnesses and ask questions at this proceeding.

Competency Examinations

Under the bill, the court must order a competency examination after the initial hearing if a preponderance of the evidence shows that (1) the examination is justified and (2) probable cause exists to believe that the child committed the offense with which he or she is charged. The bill requires that the examination be conducted by (1) a three-person clinical team constituted under policies and procedures established by the chief court administrator or (2) if the parties agree, a physician specializing in psychiatry with experience in conducting forensic interviews and in child and adult psychiatry ("psychiatrist").

The bill requires clinical teams to be composed of a clinical psychologist with experience in child and adolescent psychiatry and two of the following: a (1) licensed clinical social worker, (2) child psychiatric nurse clinical specialist holding a master's degree in nursing, or (3) physician specializing in psychiatry. At least one must have experience in conducting forensic interviews and at least one must have experience in child and adolescent psychiatry.

At the child's expense, the bill allows him or her to select a mental health professional with one of the above qualifications to observe the examination. If the child is represented by an attorney appointed through the Public Defender Services Commission, the Chief Public Defender's Office will provide an observer. In such cases, the bill also allows a social worker employed by the commission to attend the examination.

Examinations must be completed within 15 business days of the date they were ordered, unless the court finds good cause for granting more time. The bill directs the court to resume delinquency or FWSN

matters whenever it finds the child competent.

Examination Reports. The bill requires the clinical team or psychiatrist to prepare, sign, and file its report within 21 business days of the date of the court's examination order. The report need not be notarized, but must address the child's (1) ability to understand the proceedings and (2) assist in his or her own defense.

If the opinion of the clinical team or psychiatrist is that the child does not meet one or both of the above criteria, the report must also include:

1. a determination if there is a substantial probability that the child will attain or regain competency within 90 days of a court-ordered intervention and

2. the nature and type of recommended intervention and the least restrictive setting possible for implementing it.

The bill requires the court clerk to send the attorneys representing the state and child copies of the report at least 48 hours in advance of the competency hearing.

Competency Hearing

The bill requires the court to hold an evidentiary competency hearing within 10 business days of receipt of the clinical report. The child may waive his or her rights to this hearing if none of the examiners found the child incompetent.

At the hearing, either party can introduce the examination report or other evidence regarding a child's competency. If the report is introduced as evidence, the bill requires at least one member of the clinical team or the psychiatrist, as appropriate, to be present to explain the basis for the report's determinations. The prosecutor and child can jointly waive this requirement.

Competency-Restoration Considerations

If the court finds that the child is incompetent, it must decide if (1) there is a substantial probability that competency will be restored within 90 days of a court-ordered intervention and (2) any proposed intervention is appropriate. To make the latter finding, the bill allows it to consider:

1. the nature and circumstances of the alleged offense,

2. how long the clinical team or psychiatrist estimates it will take to restore the child to competence,

3. whether the child poses a substantial risk of reoffending, and

4. whether he or she can receive community-based services or treatment that could prevent reoffending.

When Competency Restoration is Not Likely. If the judge finds there is not a substantial probability that the child will attain or regain competency within 90 days or that the recommended intervention is not appropriate, it can order one of the following:

1. dismissal, if the child is charged with a delinquent act or FWSN offense;

2. that DCF assume temporary custody and notify the public defender's office, which must assign an attorney to serve as the child's guardian ad litem (representative of the child's best interest) and investigate whether an abuse and neglect petition should be filled on the child's behalf; or

3. that DCF or some other person, agency, mental health facility or treatment program, or the child's probation officer conduct or obtain an appropriate assessment and, where appropriate,

propose a plan for services that appropriately address the child's needs in the least restrictive setting available and appropriate.

Under the bill, any plan for services may include a provision allowing for interagency collaborations in order to transition the child to adult service providers when he or she reaches age 18.

When the court chooses to issue an order under options 2 or 3 above, it must hold a hearing within 10 business days to review the order of temporary custody or any recommendations made by DCF and the child's probation officer, attorney, and guardian ad litem.

When Competency Restoration is Likely

If the court finds a substantial probability that the child will attain or regain competency within 90 days if provided an appropriate intervention, the bill requires it to schedule an intervention implementation hearing within five business days.

Under the bill, such interventions must (1) not exceed 90 days, unless extended for an additional 90 days under criteria the bill establishes and (2) be provided by DCF, unless the child's parents agree to pay for these services to be administered by another appropriate person, agency, mental health facility, or treatment program that agrees to provide appropriate intervention services in the least restricting setting available and to comply with the bill's competency provisions. (It is unclear to which provisions the bill is referring.)

Before the hearing, the court must notify the DCF commissioner or her designee, or the alternative service provider that it will be ordering an intervention at the hearing. It must provide the appropriate entity a copy of the clinical team's or psychiatrist's report. Before the hearing, the participating entity must inform the court of how it proposes to implement the intervention plan.

At the hearing, the court must review the clinical report and order an appropriate intervention lasting no longer than 90 days and

occurring in the least restrictive setting available. The court must base its determination of "appropriateness" on the same criteria the bill requires it to use in making this decision after the initial competency examination (see above). The court must also set a hearing date to reconsider the child's competency. The hearing cannot be held for at least 10 business days after the intervention period expires.

At least 10 business days before the scheduled hearing, the bill requires the DCF commissioner, or designee, or the alternative treatment provider to file a report with the clinical team or psychiatrist regarding the progress of its intervention efforts. Under the bill, the same clinical team or psychiatrist must then reassess the child. If one of these individuals is not available, the bill authorizes the appointment of a new team that, where possible, includes at least one of the original members. The newly-appointed health care providers must have the same professional credentials as the original members, and must be given access to the intervention services provider's clinical information.

The bill requires the team or psychiatrist to submit a court report reassessing the child's competency. The report must include:

1. the clinical findings of the intervention service provider and the facts upon which the findings are based;

2. the team's or examining physician's opinion as to whether the child has attained or regained competency or is making progress towards restoration within the 90 days covered by the court's order; and

3. other information the court requests, including what method of intervention is being used and the type, dosage, and effect of any medication the child is being given.

The court must hold a hearing within two business days of the date on which the reassessment report was filed. The hearing's purpose is to determine if the child attained or regained competency during the

intervention period. If the child remains incompetent, the court must determine whether further efforts are appropriate. It must consider the same criteria described above.

If the court finds that further efforts to attain or regain competency are appropriate, it must order a new competency restoration period lasting no more than 90 days. If it finds that further intervention is not appropriate or the child remains incompetent when the additional period expires, it must enter an order meeting the same requirements as those the bill requires in situations where competency restoration is not likely or appropriate (see above).

When DCF Finds the Child to Be Abused or Neglected

If DCF substantiates a claim of abuse or neglect or the court approves a plan for services, the bill permits the court to dismiss the delinquency or FWSN complaint or order that the prosecution be suspended for up to 18 months. It may also direct DCF to provide periodic reports while the prosecution is suspended to ensure that the child is receiving appropriate services.

If the child or his or her parent or guardian does not comply with the plan for services, the court may hold a hearing to decide whether to file its own DCF petition. Otherwise, it must dismiss the delinquency or FWSN matter on the earlier of the date on which (1) it finds that the suspension is no longer necessary or (2) the 18-month suspension period expires.

These provisions in the bill apparently apply whether or not the child is competent.

§ 4 — ESTABLISHING PATERNITY

The bill increases the emphasis on establishing paternity in DCF abuse and neglect proceedings. Currently, when a man who has been named as the father of a DCF-involved child (a putative father) appears at the department's initial hearing and denies paternity, the court must advise him that he may be barred from participating in further legal proceedings concerning the child and either (1) order

genetic testing or (2) direct him to fill out and sign a court form used for denying paternity.

The bill, instead, directs the court to order the testing. It creates a rebuttable presumption that the man is the child's father when (1) the test results indicate at least a 99% chance of paternity and (2) the court finds evidence that the child's mother and putative father engaged in sexual intercourse during the period in which the child was conceived. After giving the putative father the opportunity for a hearing, the bill allows the court to issue a judgment adjudicating paternity.

If the test results indicate that the person tested is not the child's father, the court must issue a judgment to that effect. Under current law, this action is permissive.

Filing Paternity Documents

The bill directs the court clerk to send a copy of the paternity judgment to the Department of Public Health for inclusion in the department's paternity registry. It also directs the clerk to do this with paternity acknowledgment documents a man voluntarily signs at the initial court hearing. In the latter situation, the bill requires the clerk to keep certified copies in the court's file.

§ 5 — ROLE OF CHILD'S ATTORNEY IN ABUSE AND NEGLECT PROCEEDINGS

Current law and the Rules of Professional Conduct specify that an attorney's primary role when representing a child is to advocate for his or her legal interests. The bill creates an exception if the child's age or other incapacity makes him or her incapable of expressing his or her wishes to the attorney by requiring attorneys to advocate for their clients' best interests.

§ 6 — LIMITING COURT DISPOSITIONS FOR DELINQUENT CHILDREN

The bill eliminates the court's authority to order that a child it has adjudicated as delinquent be placed in the care of any institution or agency legally permitted to care for children. It retains its authority to

order all other dispositions permitted under current law.

§ 7 — RELATIVES SEEKING GUARDIANSHIP

Current law generally allows a child's relatives to intervene in abuse and neglect proceedings in order to request that the court grant them permanent guardianship of a DCF-involved child. By law, the court has the discretion to permit any relative to intervene after the expiration of a 90-day period following the department's initial hearing in the matter. The law requires the court to grant the relative's motion when the child's most recent placement has been, or is about to be interrupted unless it has good cause to rule otherwise.

The same standards apply under the bill, but the court cannot make this guardianship appointment permanent.

§ 8 — CREATION OF "PERMANENT LEGAL GUARDIANSHIP" STATUS

The bill creates the status of "permanent legal guardianship," which it defines as the same as the bill's revised definition of "permanent guardianship" under the state's Probate Code. This guardianship is one intended to last until the minor reaches age 18, without terminating the parents' parental rights.

The new status applies to a person who has the following obligations and authority with respect to a minor child:

1. the obligation of care and control;

2. the authority to make major decisions affecting the minor's education and welfare, such as consent determinations regarding marriage, enlistment in the armed forces, and major medical, psychiatric, or surgical treatment; and

3. upon the death of the minor, the authority to make decisions concerning funeral arrangements and the disposition of the minor's body.

Appointing a Permanent Legal Guardian: Court Requirements

When the court determines a child has been abused, neglected, or uncared-for, existing law gives it discretion to commit the child to DCF's custody or grant legal guardianship to (1) an agency legally authorized to care for abused and neglected children under age 18 or (2) any other person, including a relative, it finds "suitable and worthy" of such responsibility. The law also allows the court to place the child in a parent's or guardian's custody with protective supervision by DCF, subject to any conditions the court establishes.

The bill gives courts an additional option by permitting the court to grant permanent legal guardianship to a suitable or worthy person, including one related to the child by blood or marriage. To grant permanent legal guardianship, the bill requires the court to first notify the child's parents that they may not file a court motion to terminate the permanent legal guardianship, or indicate on the record why it could not provide this notice. It may order permanent legal guardianship if it finds, by clear and convincing evidence, that this is in the child's best interests and:

1. one of the statutory grounds for termination of parental rights exists or the parents have voluntarily consented to the guardianship;

2. adoption is not possible or appropriate;

3. the child, if over age 12, consents to the appointment or, if he or she is younger, the proposed permanent legal guardian is (a) a relative or (b) already a sibling's or siblings' permanent legal guardian;

4. the child has lived with the applicant for at least a year; and

5. the person seeking this status is a suitable and worthy person, committed to remaining the child's permanent legal guardian and assuming the right and responsibilities for the child until he or she reaches age 18.

Reopening and Modifying a Permanent Legal Guardianship Appointment

The bill allows the court to reopen and modify such an appointment and may remove a person serving as a child's permanent legal guardian when a motion is filed by someone other than the parent. The moving party must prove by a fair preponderance of the evidence that the guardian is no longer suitable and worthy. Under the bill, the court must hold a hearing before terminating a permanent legal guardianship. It is authorized to appoint a successor to serve as the child's legal or permanent legal guardian using the same method described above.

§ 8 — PETITIONS TO REINSTATE GUARDIANSHIP OF A PARENT OR OTHER FORMER GUARDIAN

The bill creates a court procedure that allows parents or other former guardians to file a court petition asking for reinstatement as guardians. When a reinstatement petition is filed, the court may order DCF to investigate and report on the current home conditions and needs of the child and those of the person seeking reinstatement.

The bill authorizes it to grant the petition if it finds that the cause for removing guardianship no longer exists and that reinstatement is in the child's best interests.

The bill allows someone to file such a petition no more than once every six months. The petitioner is generally not entitled to court-appointed counsel, but the court can order such counsel if justice requires.

§ 9-11 — PERMANENT GUARDIANSHIP APPOINTMENTS IN PROBATE COURT

The bill applies the standards it creates for permanent legal guardianship appointments in Superior Court to probate court proceedings, but refers to this status as "permanent guardianship." It also contains a provision, absent in the Superior Court provisions, for replacing a permanent guardian when he or she becomes unwilling or unable to remain in that status. It allows the court to follow existing

law in appointing a successor guardian or permanent guardian or to reinstate a parent as guardian, and takes into account the same considerations as are used in the bill's Superior Court provisions.

§ 15 — CRIMINAL MATTERS TRANSFERRED BETWEEN DELINQUENCY AND ADULT DOCKETS

The law requires juvenile courts presiding over delinquency matters to automatically transfer cases involving children at least age 14 charged with capital or class A or B felonies or arson murder to the adult criminal docket once an attorney has been appointed. The bill removes a 10-working-day deadline for prosecutors to file motions to return to the juvenile docket cases involving class B felonies and statutory rape and for courts to rule on these motions. It also makes a conforming change to the current requirement that transferred case files be sealed for 10 days.

Hearings on Motions to Return Certain Felony Cases to the Juvenile Docket

Current law permits a juvenile court to rule on a prosecutor's motion to transfer the case of any child charged with a class C or D or unclassified felony without first holding a hearing. The bill eliminates this practice. It also eliminates a requirement that courts rule on these motions within 10 days of the date of transfer, instead allowing the court to order their return at any time for good cause shown.

Currently, juvenile courts cannot grant a prosecutor's transfer order unless it finds that the offense was committed after the child reached age 14 and makes an *ex parte* finding that there is probable cause to believe that the child committed the act with which he or she was charged.

The bill eliminates the provision that requires the court to rule *ex parte* on the issue of probable cause. It also prohibits the court from granting such transfer motions unless it also finds that the best interests of the child and public will not be served by maintaining the case on the adult docket. The bill directs courts to consider:

1. the child's prior criminal or juvenile court convictions and their seriousness,

2. any evidence that the child has an intellectual disability or mental illness, and

3. the availability of juvenile court services that can serve the child's needs.

It requires that motions filed under this provision be made, and any hearing held, within 30 days after the child's arraignment.

BACKGROUND

Family With Service Needs Offense

A FWSN offense occurs when a child under age 17 (age 18, beginning July 1, 2012) runs away without good cause, is truant or beyond control of his or her parents or school authorities, or engages in certain forms of sexual or immoral conduct. The matter must be referred to a juvenile probation officer who investigates and recommends that the child receive a program of services through the court (CGS § 46b-120).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute
Yea 45 Nay 0 (03/28/2012)